



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

F. #2016R00467

*271 Cadman Plaza East  
Brooklyn, New York 11201*

December 31, 2021

By ECF

The Honorable Margo K. Brodie  
Chief United States District Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Ng Chong Hwa  
Criminal Docket No. 18-538 (S-2) (MKB)

Dear Chief Judge Brodie:

The government respectfully submits this letter motion to request a short adjournment of the trial in the above-captioned matter, in which jury selection is scheduled to commence on January 18, 2022 and opening statements are scheduled for January 24, 2022, in light of recent developments concerning the increasingly severe COVID-19 pandemic.

As the Court is no doubt aware, unfortunately, since the December 21, 2021 status conference, the number of confirmed COVID-19 cases has increased dramatically. In the last approximately two weeks, there has been a more than 150% increase in confirmed COVID-19 cases nationally, and a more than 600% increase in confirmed COVID-19 cases in the New York City region. Yesterday, December 30, 2021, the seven-day daily average of new cases exceeded 25,000 in the New York City region—and these are just confirmed, reported cases. See <https://www1.nyc.gov/site/doh/covid/covid-19-data.page#daily>. As a result of the dramatic increase in cases, thousands of airline flights have been canceled, with more than 1,200 canceled yesterday alone. In New York City, the significant increase in positive cases, many of which are “breakthrough cases,” has also severely impacted public services, including, among other things, the closure of certain subway lines, delays on other subway lines, and a request from the New York City Fire Department not to call 911 other than in cases of a serious emergency. See Beleaguered by Omicron, New York Operates at Half Speed, New York Times, <https://www.nytimes.com/2021/12/29/nyregion/covid-new-york-omicron-shutdown.html> (Dec. 29, 2021).

Although the government believes that it could be prepared to proceed to trial on the current schedule, a short adjournment is appropriate given the significant risk that because of the rapid increase in COVID-19 cases in New York and nationally, the current schedule will result in substantial disruptions to the trial, including unforeseen travel delays for both witnesses

and jurors, and, at worst, result in a mistrial. The government has serious concerns that the worsening COVID-19 conditions will negatively impact the availability of enough prospective jurors to yield a full jury and a sufficient number of alternates for the expected five-week trial; the ability of selected jurors and alternates to serve continuously throughout the trial; the ability of witnesses to appear as scheduled and in a sensible order; and the ability of lawyers, paralegals, court staff, and other personnel to handle the trial. Notably, the majority of the government's witnesses are not in New York, and a significant number are overseas. Many of these witnesses have expressed understandable concern about traveling to New York in the next few weeks (even assuming that they could do so, given flight cancellations and changes in COVID-19 protocols at airlines and in foreign countries). And even if these obstacles could be fully overcome, as defense counsel is aware, the government has experienced and continues to experience staff shortages as a result of positive COVID-19 cases, close contacts, and quarantine requirements that have resulted in production delays and in preparing materials for presentation at trial; these shortages are unfortunately likely to continue, at least in the short-term.

Accordingly, the government believes that a short adjournment of the present trial schedule is warranted to mitigate these risks and ensure that the lengthy trial in this matter can proceed safely, efficiently, and uninterrupted. Although it is difficult to predict how quickly the present COVID-19 surge will last, and thus it might be appropriate to adjourn the trial *sine die*, the government submits that it would be preferable to adjourn the trial to a date certain to help ensure that the case proceeds to trial as expeditiously as possible. The government therefore proposes that a new jury selection date be set for February 21, 2022, with opening statements set for February 28, 2022, subject to further adjournment as facts and circumstances may warrant. The government also requests that time under the Speedy Trial Act be excluded until the new trial date for the reasons set forth herein.

Defense counsel has advised that the defendant objects to this request.

Respectfully submitted,

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